



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

NOV 21 2008

The Honorable Theodore R. Mitchell  
President  
California State Board of Education  
1430 N. Street, Suite 5111  
Sacramento, California 95814

State Superintendent  
of Public Instruction

TO: SAD (L) DATE: 2/0/8 DEC 1 2008  
FOR YOUR INFORMATION

The Honorable Jack O'Connell  
Superintendent of Public Instruction  
California Department of Education  
P.O. Box 944272  
Sacramento, California 94244-2720

EXECUTIVE OFFICE OF THE ASSISTANT SECRETARY

Dear President Mitchell and Superintendent O'Connell:

The purpose of this letter is to follow up on matters discussed in letters I sent to you on February 6, 2008, and June 30, 2008. In those letters, I stated that, as a result of the most recent peer review of California's standards and assessment system, the Department had found that California's system does not yet meet all of the statutory and regulatory requirements of section 1111(b)(1) and (3) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). Under Title I of the ESEA, California was required, by the 2005–06 school year, to annually administer mathematics assessments to all 3rd- through 8th-graders that are, among other requirements, aligned with grade-level academic content and student academic achievement standards. Yet, as I noted in my prior letters, California permits some 8th-graders to take the General Mathematics assessment, which is aligned with 6th- and 7th-grade mathematics content standards, rather than requiring all 8th-graders to take an assessment that is aligned with Algebra I content standards, which apply to 8th-graders. This noncompliance was first noted in a letter to California on June 29, 2007, based on evidence California submitted to the Department that half of all 8th-graders in California (219,000 students) took the General Mathematics assessment in 2006–07.

As a consequence of this noncompliance, my letter on February 6, 2008, requested that California enter into a Compliance Agreement with the Department, as authorized by Section 457 of the General Education Provisions Act. The purpose of a compliance agreement is to enable a grantee to remain eligible to receive funding while coming into full compliance with applicable requirements as soon as feasible but within three years. My letter further noted that California could choose its method of achieving compliance, such as by phasing in, over a period of no more than three years, a requirement that all 8th-graders take the Algebra I assessment or by developing a new test aligned with the Algebra I content standards that all 8th-graders would take. Although it initially appeared that California was going to resolve this issue by developing a new 8th-grade mathematics assessment, in July of this year the State Board of Education decided to require all 8th-grade students to take the Algebra I assessment. In recognition of the additional implementation efforts associated with setting that standard, and in an effort to provide additional flexibility to California in accomplishing that goal, the Department was willing to consider granting the state a timeline waiver, under section 9401 of the ESEA, to enable California to remain eligible to receive funding while coming into full compliance with applicable requirements as soon as feasible but within four years. It is our understanding, however, that on October 28, 2008, a judge of the Superior Court for the State of California, County of Sacramento, enjoined temporarily the State

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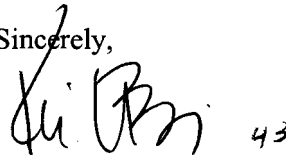
*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Board from taking any action to implement its July 2008 decision requiring all 8th-grade students to take the Algebra I assessment.

To date, therefore, California has not come into compliance with the statutory and regulatory requirements, has not taken the necessary steps to enter into a compliance agreement or to request a timeline waiver, and, absent prompt action, is unlikely to make significant progress even in the 2009–2010 school year to reduce the percentage of 8th-grade students taking an assessment that is aligned with 6th- and 7th-grade content and academic achievement standards. Because of the significance of California's non-compliance with Title I statutory and regulatory requirements, the fact that the state has not been in compliance since the 2005–2006 school year, and the fact that the state has not made meaningful progress to develop an action plan and timeline to come into compliance, the Department intends to withhold a portion of the state's fiscal year 2008 Title I, Part A administrative funds, totaling \$1,000,000, pursuant to Section 1111(g)(2) of the ESEA. California has the opportunity, within 20 business days of receipt of this letter, to show cause in writing why the Department should not withhold these funds. If California cannot show cause, the Department will withhold \$1,000,000 of California's fiscal year 2008 Title I, Part A administrative funds, which will then revert to the local educational agencies in California.

In addition, please be advised that failure to quickly develop a mutually agreeable plan to come into compliance may result in the Department taking further action against the state. I know you are eager to resolve this situation and receive full approval of your standards and assessment system, and we are committed to helping you achieve this goal. Toward that end, let me reiterate my earlier offer to come to Sacramento with my staff to meet with you and help refine California's approach for coming into compliance with the Title I standards and assessment requirements. If you have any questions or would like to discuss this further, please do not hesitate to contact Patrick Rooney ([Patrick.Rooney@ed.gov](mailto:Patrick.Rooney@ed.gov)) or Grace Ross ([Grace.Ross@ed.gov](mailto:Grace.Ross@ed.gov)) of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerri L. Briggs", with a small "43" written to the right of the signature.

Kerri L. Briggs, Ph.D.

cc: Governor Arnold Schwarzenegger  
Gavin Payne, Chief Deputy Superintendent of Public Instruction, Office of the State  
Superintendent of Public Instruction  
Deb Merle, Executive Director, California State Board of Education